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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/179,002 10/26/98 LOHRAY V U-011904-5

HM22/1201

EXAMINER

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LADAS & PARRY  
26 WEST 61 ST  
NEW YORK NY 10023

RAYMOND, R

ART UNIT	PAPER NUMBER
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1611

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DATE MAILED:

12/01/99

**Please find below and/or attached an Office communication concerning this application or proceeding.****Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.  
09/179,002

Applicant(s)

Lohray et al.

Examiner

Richard L. Raymond

Group Art Unit

1611



Responsive to communication(s) filed on \_\_\_\_\_.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1-34 and 53-76 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims 1-34 and 53-76 are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Election/Restriction*

2. **Restriction** to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-13, 24-34 and 65-76, drawn to compounds, compositions, processes of making and processes of using, classified in class 514, subclass 269.
  - II. Claims 14 and 15 , drawn to CN intermediates, and process of making classified in class 544, subclass 319.
  - III. Claims 16 and 17, drawn to N<sub>2</sub> intermediates and process of making, classified in class 544, subclass 319.
  - IV. Claims 18 and 19, drawn to amide intermediates and process of making, classified in class 560, subclass 42.
  - V. Claims 20 and 21, drawn to amine intermediates and process of making, classified in class 560 subclass 42.
  - VI. Claims 22 and 23, drawn to N<sub>3</sub> intermediates and process of making, classified in class 552, subclass 10.

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VII. Claims 53-64, drawn to diamide intermediates, composition, process of making and processes of using, classified in class 514, subclass 542.

3. The inventions are distinct, each from the other because of the following reasons:  
Inventions I and II-VII are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as herbicides and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Inventions II-VII are drawn to structurally diverse and patentably distinct intermediates.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. **Election of species:** Claims 1, 14, 16, 18, 20, 22 and 53 are generic to a plurality of disclosed patentably distinct species comprising the compounds of the working examples.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Related compounds will be grouped together for examination purposes.

7. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Raymond whose telephone number is (703) 308-4523. The examiner can normally be reached on weekdays from 9:30 AM to 6:00 PM.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

rr

November 30, 1999



RICHARD L. RAYMOND  
PRIMARY EXAMINER  
ART UNIT 1611